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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re J.W., a Person Coming Under the  
Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND  
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

Damion W.,

Defendant and Appellant.

D056729

(Super. Ct. No. J515725D)

APPEAL from an order of the Superior Court of San Diego County, R.F. Frazier,  
Judge. Affirmed.

Damion W. appeals an order terminating parental rights to his daughter, J.W.,  
under Welfare and Institutions Code section 366.26. (Further statutory references are to  
the Welfare and Institutions Code.) We affirm the order.

## FACTUAL AND PROCEDURAL BACKGROUND

J.W. was born in February 2008. Her mother died one month later. J.W.'s father, Damion W., cared for J.W. and the mother's one-year-old son. J.W. became a dependent of the juvenile court after Damion left her and her brother with a girlfriend who was unable and unwilling to care for them while Damion was incarcerated.

Damion was convicted in 2007 for theft and sentenced to two years probation. His probation was revoked when he was charged with four counts of possession of marijuana, four counts of failure to appear and several vehicle code violations. He had also been charged with possession of methamphetamine; however, the charges were dismissed because the quantity of the drug found in his pocket was not considered to be a usable amount.

A psychologist recommended Damion participate in individual therapy, outpatient substance abuse treatment, anger management training and a parent education program. The psychological evaluation indicated Damion had an adjustment disorder with mixed anxiety and depressed mood, impulse control disorder, bereavement and cannabis abuse. He had passive-aggressive, paranoid and antisocial traits and rule out personality disorder.

Services were first offered to Damion in August 2008. Damion participated in supervised visits with J.W. His parenting skills were attentive, affectionate and appropriate. Damion demonstrated age-appropriate concern for J.W.'s safety. However, Damion was not able to maintain his sobriety for the 30 days necessary to start therapy until May 2009. Damion did not enroll in anger management training. He participated in

only a few parenting classes. Damion continued to test positive for THC throughout the reunification period and refused a referral to a residential treatment or detox program.

At the six-month status review hearing in July 2009, the court terminated reunification services. The section 366.26 hearing was held on February 1, 2010. The court admitted the Agency's reports into evidence. The social worker and Damion testified.

The social worker stated J.W. was almost two years old. Damion's visits were fairly consistent. He was appropriate with J.W. during visits. When J.W. cried, Damion was not always able to console her. J.W. asked for "mommy" during the visits, referring to her caregiver. The social worker did not believe Damion had a parental relationship with J.W. He did not telephone to inquire about J.W.'s well-being and did not attend her medical appointments.

The caregivers were willing to adopt J.W. She called them "mom" and "dad." They were in the process of adopting J.W.'s older brother.

Damion testified he played with J.W., read to her, changed her diaper, consoled her, fed her and hugged her while she slept. He taught J.W. to crawl and talk. Damion tried to stay in contact with the caregiver but she changed her telephone number. He bought clothing for J.W.

The trial court found that J.W. was generally and specifically adoptable, and terminated Damion's parental rights.

## DISCUSSION

Damion contends the court erred when it terminated his parental rights to J.W. He argues termination of parental rights would be detrimental to J.W. under the beneficial parent-child relationship exception. (§ 366.26, subd. (c)(1)(B)(i).)

At a section 366.26 hearing, the court may select one of three permanency plans: adoption, guardianship, or long-term foster care. (*In re Taya C.* (1991) 2 Cal.App.4th 1, 7.) There is a strong preference for adoption over alternative permanency plans. (*San Diego County Dept. of Social Services v. Superior Court* (1996) 13 Cal.4th 882, 888; *In re Zachary G.* (1999) 77 Cal.App.4th 799, 808-809.) If the court determines the child is likely to be adopted, the burden shifts to the parent to show termination of parental rights would be detrimental to the child under one of the exceptions listed in section 366.26, subdivision (c)(1). (*In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1343-1345; but see § 366.26, subd. (c)(1)(A).)

An exception to termination of parental rights exists when "[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." (§ 366.26, subd. (c)(1)(B)(i).) "Benefit from continuing the relationship" means "the [parent-child] relationship promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents." (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575 (*Autumn H.*).) The exception does not require proof the child has a "primary attachment" to the parent or the parent maintained day-to-day contact with the child. (*In re S.B.* (2008)

164 Cal.App.4th 289, 300; *In re Brandon C.* (1999) 71 Cal.App.4th 1530, 1534-1538; *In re Casey D.* (1999) 70 Cal.App.4th 38, 51.)

Where the parent has continued to regularly visit and contact the child, and the child has maintained or developed a significant, positive, emotional attachment to the parent, "the court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated." (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.)

If substantial evidence supports the court's ruling, the reviewing court must affirm the court's rejection of the exceptions to termination of parental rights. (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 576; *In re S.B.*, *supra*, 164 Cal.App.4th at p. 298.)

The court could reasonably conclude that Damion did not demonstrate his relationship with J.W. was parental in nature. The record shows J.W. spent less than five months in Damion's care, which was interrupted when he was incarcerated on outstanding warrants. Damion left J.W. in his girlfriend's household without providing for J.W.'s support and without asking his girlfriend, who had health problems, whether she would care for the infant.

Unlike the parent in *In re Amber M.* (2002) 103 Cal.App.4th 681, 690-691, Damion did not do everything that was asked of him to regain custody of his child. (See also *In re S.B.*, *supra*, 164 Cal.App.4th at p. 299.) Damion did not recognize the negative

effects his drug use and anger would have on J.W. He continued to deny that his anger, substance abuse problems and psychological issues affected his stability as a parent. Damion did not focus on J.W.'s needs. As a result, Damion was limited to weekly, supervised visits with a very young child. Under these circumstances, Damion was not able to establish a beneficial parental relationship with J.W. (*In re Casey D.*, *supra*, 70 Cal.App.4th at p. 51.)

While Damion was attentive, playful and loving with J.W. during their weekly supervised visits, he did not present any evidence to show J.W. had a "substantial, positive emotional attachment" to him. (*In re S.B.*, *supra*, 164 Cal.App.4th at p. 297, 299.) J.W. asked for her "mommy" during her visits with Damian. She had lived with the caregivers, and her brother, for most of her life. (*Autumn H.*, *supra*, 27 Cal.App.4th at pp. 575-577.) J.W. easily separated from Damion when visits ended. Damion was unable to recognize J.W.'s attachment to her caregiver and insisted J.W. was "mistaken" when she called her caregiver "mommy." Unlike the father in *In re S.B.*, *supra*, at p. 298-299, Damion was unable to place J.W.'s needs above his own.

The trial court reasonably determined termination of parental rights would not be substantially detrimental to J.W. (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) We conclude that the court's finding the beneficial parent-child relationship exception did not apply is fully supported by the record.

DISPOSITION

The finding and order are affirmed.

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MCINTYRE, Acting P. J.

WE CONCUR:

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O'ROURKE, J.

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AARON, J.